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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY, as Director of the Bureau of Street Maintenance for the City of Los Angeles,
Appellants,

v.

TAXPAYERS FOR VINCENT, an unincorporated political association, and CANDIDATES' OUTDOOR GRAPHICS SERVICE (COGS), a California corporation,
Appellees.

ON APPEAL FROM UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF AMICUS CURIAE OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS IN SUPPORT OF APPELLANTS MEMBERS OF THE CITY COUNCIL OF LOS ANGELES

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TABLE OF CONTENTS

Page

INTEREST OF THE AMICUS CURIAE 1

STATEMENT OF THE CASE 3

SUMMARY OF ARGUMENT 3

ARGUMENT 3

I. The Los Angeles ordinance survives the initial three-prong test of validity enunciated by this Court 3

II. The Los Angeles ordinance is drafted so as to demonstrate a causal relationship between the restrictions and the governmental objectives 8

CONCLUSION 11

TABLE OF AUTHORITIES

Cases: Page

Adderly v. Florida,
385 U.S. 39 (1966) 7

Consolidated Edison Co. of New York, Inc. v. Public Service Comm'n, 447 U.S. 530 (1980) 3, 4

Cox v. Louisiana,
379 U.S. 536 (1965) 7, 10

Erznoznik v. Jacksonville,
422 U.S. 205 (1975) 9

Frumer v. Cheltenham Twp.,
545 F. Supp. 1292 (E.D. Pa. 1982) 6, 7, 8, 9

John Donnelly & Sons v. Campbell,
639 F.2d 6 (1st Cir. 1980), *aff'd*,
453 U.S. 916 (1981) 9

Lehman v. Shaker Heights,
418 U.S. 298 (1974) 3, 10

Metromedia, Inc. v. San Diego,
453 U.S. 490 (1981) 4, 9, 10

Police Dept. of Chicago v. Mosley,
408 U.S. 92 (1972) 10

PruneYard Shopping Center v. Robins,
447 U.S. 74 (1980) 8

Taxpayers for Vincent v. Members of the City Council, No. C 79-0957 (C.D. Cal. Aug. 6, 1980) 4

Municipal Ordinances:

Beverly Hills, Cal., Ordinance 80-0-1775 (Nov. 5, 1980), amending Municipal Code 4, 5

Page

§ 10-4.101 4

§ 10-4.302 5

§ 10-4.806(a) 5

§ 10-4.806.1 5

Houston, Tex., Code of Ordinances, ch.3, § 3-3 (1982) 5

Las Vegas, Nev., Municipal Code § 17.70.020 (1983) 6

Newark, N.J., Revised Ordinances § 22:21A-2 (1981) 6

Rockville, Md., Laws ch.6, div.6 (1982) 5

§ 3-601(a) 5

§ 3-603(h) 5

Seattle, Wash., Municipal Code (1980) 5

§ 2.24.020 5

§ 2.24.050(D) 6

Walnut Creek, Cal., Municipal Code § 10-2.1918(a)(5) (1982) 5

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BRIEF OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS AS AMICUS CURIAE

INTEREST OF AMICUS CURIAE

This brief *amicus curiae* is filed pursuant to Rule 36 on behalf of the more than 1600 local governments, or political subdivisions of states, that are members of the National Institute of Municipal Law Officers [NIMLO].

These member local governments operate NIMLO through their chief legal officers, variously called city or county attorney, corporation counsel, city solicitor or law director and other titles, with each member local government having one vote on all actions which are cast by the organization. This brief *amicus curiae* is signed by members of the Executive Committee of NIMLO as the authorized law officers of their own local governments and in their capacities as representatives of the NIMLO membership. The City of Los Angeles is a member of NIMLO.

The attorneys who operate NIMLO for their local governments are responsible for advising their governments' legislative and administrative bodies about the legal aspects of regulating the posting of signs. The attorneys also represent their governments in litigation resulting from the enforcement of regulatory measures such as the Los Angeles sign ordinance before this Court. The assertion of the appellees in this case is essentially that municipalities cannot disallow the posting of signs on public property in the interest of traffic safety, community aesthetics and preventing interference with the normal uses of public objects. Affirmance of such a holding would obstruct the ability of local governments to meet the needs and safeguard the rights of their residents and visitors.

NIMLO believes that the opinion of the Ninth Circuit here on appeal does not properly balance the interests of the appellees against those of local governments and their citizens. The effect of affirming the decision below would be contrary to the public interest; consequently, NIMLO urges reversal of the judgment entered in this case by the United States Court of Appeals for the Ninth Circuit.

Consent to the filing of this brief has been given by counsel for both parties. Copies of these letters of consent have been lodged with the Clerk of this Court.

STATEMENT OF THE CASE

The statement of the case as set forth in Appellants' Jurisdictional Statement is adopted by the National Institute of Municipal Law Officers for purposes of this brief amicus curiae.

SUMMARY OF ARGUMENT

The Los Angeles ordinance at issue herein is a valid time, place and manner restriction on the posting of signs, in that it is content neutral, directly serves a significant governmental interest, allows for sufficient unencumbered alternative channels of communication, and is no broader than the local legislative body has deemed necessary to advance the city government's legitimate goals.

ARGUMENT

The First Amendment guarantee of freedom of speech is especially compelling when applied in the context of political expression. However, even political speech may be properly subject to reasonable time, place and manner restrictions. *Lehman v. Shaker Heights,* 418 U.S. 298 (1974).

I. THE LOS ANGELES ORDINANCE SURVIVES THE INITIAL THREE-PRONG TEST OF VALIDITY ENUNCIATED BY THIS COURT

The restrictions imposed on the posting of signs pursuant to the Los Angeles ordinance challenged by appellees are reasonable when analyzed under the three-part test applied by the Court in *Consolidated Edison Co. of New York, Inc. v. Public Service Comm'n,* 447 U.S. 530 (1980). This test requires that the reasonableness of a regulation on speech be determined according to content neutrality, the governmental interests served and the availability of alternative channels of communication.

That the Los Angeles ordinance is content neutral, both in fact and in appearance, is not disputed. The regulation, and the removal of illegally posted signs, is without regard to their content (Jur. St. App. 17a (9)).[1] Furthermore, while the appellees herein concentrate on the restrictions imposed on political expression, there is no indication that the Los Angeles ordinance was "... motivated by ... a desire to curtail expression of a particular point of view ...." *Consolidated Edison Co. of New York,* 447 U.S. at 546 (Stevens, J., concurring). Thus, the regulation cannot be faulted for any discrimination such as was found objectionable by this Court in *Metromedia, Inc. v. San Diego,* 453 U.S. 490 (1981).

Several significant governmental interests were identified by the trial court as being served by the Los Angeles measure (Jur. St. App. C). These interests include: aesthetics (Jur. St. App. 17a (14)); facilitating utility repairs (Jur. St. App. 18a (15, 16)); and traffic safety (Jur. St. App. 18a (17)).

Traffic safety and aesthetics have been deemed by this Court to constitute substantial governmental goals. *Metromedia, Inc. v. San Diego,* 453 U.S. 490, 507-508 (1981). And, as in *Metromedia,* the judgment of many local legislators across the nation is likewise that regulations similar to the challenged ordinance are desirable means to achieve legitimate goals.[2] Even where the regula-

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[1]References to the Findings of Fact of the district court in *Taxpayers for Vincent v. Members of the City Council,* No. C79-0957 (C.D. Cal. Aug. 6, 1980), are cited herein as (Jur. St. App.____), and refer to the appropriate pages in Appendix C of Appellants' Jurisdictional Statement.

[2]For example, Beverly Hills, California states as justification for its various regulations pertaining to signs: "...(4) to encourage a desirable urban character which has a minimum of overhead clutter; ... [and] (7) to reduce possible traffic and safety hazards through good signing...." Beverly Hills, Cal., Ordinance 80-0-1775 (Nov. 5, 1980), amending MUNICIPAL CODE § 10-4.101. This same ordinance makes it

tion is expressly addressed to political signs, local lawmakers concerned about protecting citizens' rights to express political beliefs have reached the same conclusion as to allowing the posting of political signs on public or utility property.[3]

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unlawful to affix any sign upon specified public or utility property, including rights-of-way, trees, poles and buildings. *Id.*, amending MUNICIPAL CODE § 10-4.302.

Rockville, Maryland prohibits any person from erecting signs on any public property or right-of-way. ROCKVILLE, MD., LAWS ch. 6, div. 6, § 3-603(h) (1982). The purposes of the sign requirements are "... to prevent wasteful use of natural resources in competition among businesses for attention, to prevent hazards to life and property and to assure the continued attractiveness of the City...." *Id.*, § 3-601(a).

Houston, Texas proscribes the placing of advertising matter, including political advertisements, on, inter alia, utility poles, trees, traffic signals or other structures located in public rights-of-way, easements, public property, or any other public place. HOUSTON, TEX., CODE OF ORDINANCES, ch. 3, § 3-3 (1982).

Walnut Creek, California prohibits "...[p]lacards, posters, announcements or political signs posted or attached to any fence, pole, tree or any object in a public right-of-way." WALNUT CREEK, CAL., MUNICIPAL CODE § 10-2.1918(a)(5) (1982).

[3]In addition to its general restrictions on signs, *see supra* p. 4, note 2, Beverly Hills proscribes the posting of political signs on, for example, the surface of public rights-of-way, within publicly owned recreation areas or on buildings owned or leased by public agencies. Beverly Hills, Cal., Ordinance 80-0-1775 (Nov. 5, 1980), amending MUNICIPAL CODE § 10-4.806.1. The ordinance states that "[b]ecause of the substantial possibility that political signs, if uncontrolled, would result in a proliferation of such signs ... with the attendant litter, [and] traffic safety and structural hazards ... [i]t is the purpose and intent of the City Council to provide minimal regulations regarding the posting, display maintenance and removal of political signs in order to protect the rights of political candidates and the proponents and opponents of various political views or measures as well as protect the health, safety and general welfare of the general public...." *Id.*, amending MUNICIPAL CODE § 10-4.806(a).

Similarly, in its provisions on temporary political signs, Seattle, Washington states that "[t]he purpose of this chapter is to protect the city from visual pollution or litter..., while at the same time protecting the citizens' right to express political ideology and support of par-

The Los Angeles classification of locations where signs should not be allowed for traffic safety and aesthetic reasons is easily understood even absent outside evidence as to the common nature of such concerns. As explained by a federal district court in upholding an ordinance similar to Los Angeles' in *Frumer v. Cheltenham Twp.*, 545 F. Supp. 1292 (E.D. Pa. 1982):

> ... It cannot be disputed that signs are distracting. Their whole purpose is to call attention to themselves and to the extent that they are successful, a motorist's powers of observation are diverted from those things which he may injure or which may bring injury to him. A sign that is large enough to be seen at one glance may also be large enough to conceal a hazard. A small sign may get more than a glance just because it needs more attention to be understood. Usually, temporary signs rely on the impact of multiple exposures to convey their message, proliferating without seeming limit in the process. To suggest that one may simply turn away from the impact of temporary signs is to suggest that one may do that which the sign-placer has resolved one shall not do. Neither pedestrians nor drivers can turn away if there are three-four signs on every pole on both sides of the street. To argue that one need not look is to contend one should walk or

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ticular candidates freely." SEATTLE, WASH., MUNICIPAL CODE § 2.24.020 (1980). Nevertheless, in addition to other restrictions, the city prohibits the placement "... of any temporary political sign on any public right-of-way or other city property." *Id.*, § 2.24.050(D) (1980).

Las Vegas provides that "... no political sign shall be placed on any public property or right-of-way or posted on any utility pole or device." LAS VEGAS, NEV., MUNICIPAL CODE § 17.70.020 (1983).

Newark, New Jersey has made it "... unlawful for any person to post a political campaign sign on or over any public property...." NEWARK, N.J., REVISED ORDINANCES § 22:21A-2 (1981).

> drive carelessly. Furthermore, it cannot be disputed that temporary signs posted on traffic signs which either detract attention from them, or worse conceal them, are hazardous both to drivers and pedestrians.

Id. at 1295. Indeed, if they were not trying to attract the attention of motorists and other traffic, appellees presumably would not find it necessary to post their signs along public rights-of-way.

Just as easily seen is the fact that different aesthetic incentives operate to encourage private property owners to moderate the clutter resulting from signs posted with permission on their own land than would operate on commercial enterprises or political or religious volunteers to monitor, repair, replace or remove signs posted on public property urging their causes. Signs that are either obsolete or in disrepair are not likely to remain on private property long, whereas the sight of old and torn signs, and concomitant litter,[4] is not uncommon where signs on public property are tolerated.

The right and responsibility of state and local governments to preserve public property for its intended uses, such as facilitating utility repairs, has also been recognized by this Court. *See, Adderly v. Florida,* 385 U.S. 39, 47-48 (1966); *Cox v. Louisiana,* 379 U.S. 536, 554 (1965). Therefore, each of the specific governmental interests found by the district court to be served by the challenged ordinance has been recognized by this Court to be a legitimate reason for limiting First Amendment activities.

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[4]As noted by the district court in *Frumer, supra,* "... temporary signs ... eventually fall to the ground creating a litter problem and, therefore, further detract from the appearance of the community." 545 F.Supp. at 1294 n. 6.

For several reasons, the third prong of the test, the availability of alternative channels of communication, also cannot be invoked to defeat the Los Angeles ordinance. First, the ordinance does not impact at all upon the posting of signs on private property. Second, the right to use public places for traditional speech, as distinguished from visual communication, is not burdened by the ordinance. Finally, as with the ordinance in *Frumer,*[5] the Los Angeles ordinance does not prevent appellees from utilizing leaflets, direct mail, radio, television, newspapers, bumper stickers, door-to-door campaigning, or hand-carried signs to disseminate their messages. In fact, this Court has found that the California Constitution ensures the right of persons such as appellees to exercise free speech and petition rights on the property of privately owned shopping centers that are open to the public. *PruneYard Shopping Center v. Robins,* 447 U.S. 74 (1980).

II. THE LOS ANGELES ORDINANCE IS DRAFTED SO AS TO DEMONSTRATE A CAUSAL RELATIONSHIP BETWEEN THE RESTRICTIONS AND THE GOVERNMENTAL OBJECTIVES

Any less restrictive proscription on the posting of signs on public or utility property in Los Angeles would bring into question the sincerity of the city legislature's belief in the stated goals of the ordinance. The city legislators have determined both that legitimate governmental interests are to be served by such a restriction on signs and that the adopted ordinance is the best means of balancing the government's interests with the First Amendment rights of its citizens. As it has stated before, this Court should be hesitant "... to disagree with the accumulated commonsense judgments of local lawmakers..." in such a case.

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[5]545 F. Supp. at 1295.

Metromedia, Inc., 453 U.S. at 509. Should the Ninth Circuit decision in the instant case be affirmed, the judgments of local lawmakers throughout the country, not just in Los Angeles,[6] as to how best to deal with their specialized local problems related to the posting of signs on public property, would, in effect, be entirely disregarded.

The restrictions of the Los Angeles ordinance are drawn in the manner that best achieves the proper governmental goals without excessive infringement on the First Amendment rights of any person. With respect to neither the traffic safety nor the aesthetics justification, is the Los Angeles classification of locations where signs may not be posted "strikingly underinclusive." *Erznoznik v. Jacksonville*, 422 U.S. 205, 214 (1975). While banning the posting of signs on the enumerated public and utility property may not address all causes of traffic hazards and blight in the city, the measure is certainly a large step in that direction. Yet, because of the availability of significant alternative channels of communication,[7] the deterrent effect of the ordinance on legitimate expression is not unacceptably "real or substantial." *See, id.* at 216.

The focus of the challenged ordinance is urban areas that are highly accessible to the sight and presence of the public. Accordingly, the ban adopted by the city is directed at all posted signs in those certain areas; it is not a ban on certain posted signs in all areas.[8] Appellees herein

[6] *See supra*, pp. 4-6, notes 2, 3.

[7] *See* discussion *supra*, p. 8.

[8] Therefore, as noted by the district court in *Frumer v. Cheltenham Twp.*, 545 F. Supp. 1292, 1295 n. 8 (E.D. Pa. 1982), such an ordinance is distinguishable from the state statute at issue in *John Donnelly & Sons v. Campbell*, 639 F.2d 6 (1st Cir. 1980), *aff'd*, 453 U.S. 916 (1981). In *John Donnelly & Sons*, the First Circuit found a principal purpose of the statute to be the abolishment of billboards. *Id.*, 639 F.2d at 7. Thus, the impact and intent of the statute was to deny plaintiffs therein any meaningful channel of communication.

have ample opportunities to express their viewpoints in meaningful, and some relatively inexpensive, ways, on public, as well as private residential or commercial, property. "...[A]ny more narrowly drawn restriction... would promote less well the achievement of [the] goal[s]." *Metromedia, Inc.*, 453 US. at 528 (Brennan J., concurring).

In any event, attempts to enforce less restrictive, and therefore less successful, regulations to achieve the governmental goals are likely to raise a number of obvious problems, some of which already have been recognized by this Court. In addition to the potential of an unwieldy and costly administrative apparatus developing to supervise more-limited restrictions, there may be questions concerning the neutrality of the government regarding the ideologies espoused on signs permitted in certain public areas, *Lehman v. Shaker Heights*, 418 U.S. 298, 304 (1974); the fairness of standards developed to limit the availability of a public forum to specified kinds of speech, *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 96 (1972); and the constitutionality of delegating authority to public officials or employees to determine when to permit signs on public property, or when to remove signs not clearly in violation of the ordinance, *Cox v. Louisiana*, 379 U.S. 536, 557 (1965).

CONCLUSION

Because, for the foregoing reasons, the challenged Los Angeles ordinance represents a valid time, place and manner restriction on the exercise of First Amendment rights, the National Institute of Municipal Law Officers, as *amicus curiae,* respectfully submits that the decision rendered by the United States Court of Appeals for the Ninth Circuit in this case should be reversed.

Respectfully submitted,

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